IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

Crl.Rev.Pet.No. 594 of 1999()

CRA.11/1996 of SESSIONS COURT, THRISSUR
CC.500/1995 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER:

MUHAMMED,
S/O. ERSHAN VEETTIL ABU,
PUTHENKADAPPURAM DESOM,
MANATHALA VILLAGE.

BY ADV. SRI.RAJIT

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI AMJAD ALI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

CRL.R.P.NO. 594 of 1999

Dated 31ST day of May, 2007

ORDER

The revision petitioner who is the Ist accused in C.C.No.500/95 in the file of the JFCM, Chavakkad stands convicted for the offence under sections 457 and 380 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for six months for the offence under section 380 IPC.

2. The prosecution case is that the Ist accused along with A2 to A4 (A3 and A4 absconding) trespassed into the thatched house of PW-1 on 24-5-1993 at 3 a.m and snatched a gold chain worn by PW1 which is valued at Rs.2500/-. The evidence consisted of the testimony of PWs-1 to 6; Exts. P1 to 3 and MO-1 gold chain. PW-1, the lady, who rendered the FIS, PW-2 her son, PW-4 the police constable who recorded the FIS, and PW5 the jewellery owner to whom the accused alleged to have sold the gold chain have deposed. PW-3 is the attester to the recovery mahazar, Ext.P3. PW-1 from whose neck the gold chain was snatched has not seen the accused. The offence

was committed in the night at 3 a.m. The solitary evidence to connect the accused with the offence is the testimony of the jewellery owner (PW-5) who has testified that the accused sold the gold chain to him on 24-5-1993. She has identified MO-1 gold chain. It was pointed out by the counsel for the revision petitioner that the evidence of PW-5 is not at all reliable as it contained a number of inconsistencies. He has stated in the cross examination that he has not tested the gold chain and that he could not say the length and weight of the gold chain. In the cross examination, he has also deposed that the S.I brought the accused to his jewellery and told him that the accused is the thief. He has also stated that he has no acquaintance with the accused. The contradiction in S.161 statement has been brought out that he has stated in his previous statement that the chain was sold to him by Muhammed (A1) of Puthenkadappuram who is known to him. According to him, it is the first time that he is purchasing a gold chain from anybody else. It is stated that he is not in the habit of purchasing gold from persons who is not known to him. It is also pertinent to note that Ext.P3 seizure mahazar contained a confession statement and MO-1 was recovered as

per the confession statement of the accused. The investigating officer was not examined to the prove the section 27 recovery statement and mahazar. PW-6 the witness to Ext.P3 seizure mahazar did not support the prosecution version. According to him, he has not witnessed the recovery.

3. In the circumstances, it appears to me that on the solitary evidence of PW5, which is not very consistent, it cannot be held that the prosecution has proved beyond doubt that the accused is guilty of the offence.

In the result, the findings of the courts below are set aside. The accused is acquitted.

The court below is directed to release M.O-1 gold chain to PW-1 if not already released the same.

The Crl.R.P is allowed.

K.R.UDAYABHANU,
JUDGE

kvm/-

K.R.UDAYABHANU, J.

CRL.R.P. NO. 594/1999

ORDER

31-5-2007.